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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/151,409 09/10/98 DALE

J 481112.410

EXAMINER

000500 HM12/0328  
SEED INTELLECTUAL PROPERTY LAW GROUP PLL  
701 FIFTH AVE  
SUITE 6300  
SEATTLE WA 98104-7092

DEVL.S

ART UNIT

PAPER NUMBER

1645

23

DATE MAILED:

03/28/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
**09/151,409**

Applicant(s)

Date

Examiner

**S. Devi, Ph.D.**

Group Art Unit  
**1645**



☒ Responsive to communication(s) filed on 03/12/01.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire one month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 12-53 ~~is/are~~ pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☒ Claim(s) 1-11 ~~is/are~~ ~~\_\_\_\_\_~~ canceled.

☐ Claim(s) \_\_\_\_\_ is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☒ Claims 12-53 are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

**Election/Restriction**

- 1) Claims 1-11 have been canceled via the amendment filed 03/12/01 (paper no. 21).  
New claims 12-53 have been added via the amendment filed 03/12/01 (paper no. 21).
- 2) **Please Note:** In an effort to enhance communication with our customers and reduce processing time, Group 1640 is running a Fax Response Pilot for Written Restriction Requirements. A dedicated Fax machine is in place to receive your responses. The Fax number is 703-308-4315. A Fax cover sheet is attached to this Office Action for your convenience. We encourage your participation in this Pilot program. If you have any questions or suggestions please contact Paula Hutzell, Ph.D., Supervisory Patent Examiner at Paula.Hutzell@uspto.gov or 703-308-4310. Thank you in advance for allowing us to enhance our customer service. Please limit the use of this dedicated Fax number to responses to Written Restrictions.
- 3) Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 12-47, drawn to a recombinant fusion protein and a composition comprising the same, classified in class 530, subclass 350.
  - II. Claims 48-53, drawn to a method for vaccinating a host against group A streptococcal infections by administering the composition, classified in class 424, subclass 244.1.
- 4) Inventions I and II are related as product and process of using the product. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process of using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (M.P.E.P 806.05(h)). In the instant case, the protein product of invention I can be used in a materially different process, for example, as a coating antigen in *in vitro* diagnostic tests.

Because these inventions are distinct for the reasons given and have acquired a separate status in the art as shown by their different classification/subclassification and divergent subject matter, restriction for examination purposes as indicated is proper.
- 5) Applicants are advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 C.F.R.

Serial Number 09/151,409  
Art Unit: 1645

1.143).


6) Applicants are reminded that upon cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filled petition under C.F.R. 1.48(b) and by the fee required under 37 C.F.R. 1.17(h).

7) Applicants are asked to note that upon election of claim(s) drawn to a product, the corresponding method claim(s) will be retained as pending claims pursuant to the rejoinder provisions of M.P.E.P. 821.04 and will be withdrawn from consideration until such time as the subject matter of elected product claim(s) are deemed allowable. The Examiner in charge of the instant application will then determine if corresponding method claims include all of the limitations of the allowable product claim(s) prior to determining if rejoinder will be permitted under M.P.E.P. 821.04.

8) Any inquiry concerning this communication or earlier communications from the Examiner should be directed to S. Devi, Ph.D., whose telephone number is (703) 308-9347. A message may be left on the Examiner's voice mail system. The Examiner can normally be reached on Monday to Friday from 7.15 a.m. to 4.15 p.m. except one day each bi-week, which would be disclosed on the Examiner's voice mail system.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Lynette Smith, can be reached on (703) 308-3909.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

  
S. Devi, Ph.D.  
Patent Examiner  
March 2001



# RESTRICTION ELECTION FACSIMILE TRANSMISSION

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DATE:

FROM/ATTORNEY:

FIRM:

PAGES, INCLUDING COVERSHEET:

PHONE NUMBER:

TO EXAMINER: S. DEVI, Ph.D.

ART UNIT: 1645

SERIAL NUMBER:

FAX/TELECOPIER NUMBER: (703) 308-4315

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\_\_\_\_\_  
\_\_\_\_\_

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